

**Allied Industrial Workers of America, AFL-CIO,  
Region 8 and Archie E. Robbins. Cases 17-  
CA-9743 and 17-CA-10013**

December 2, 1982

**DECISION AND ORDER**

**BY CHAIRMAN VAN DE WATER AND  
MEMBERS FANNING AND HUNTER**

On February 12, 1982, Administrative Law Judge Richard J. Boyce issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,<sup>1</sup> and conclusions of the Administrative Law Judge only to the extent consistent herewith and to adopt his recommended Order, as modified herein.

We agree with the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) of the Act when its regional director, Daugherty, threatened to fire Regional Representative Robbins if he did not "keep his nose out of" the strike by Respondent's office clerical employees.<sup>2</sup> We also agree with the Administrative Law Judge's conclusion that Respondent violated Section 8(a)(1) of the Act when Daugherty said he would retaliate against the regional representatives for "getting together against him" and filing a joint grievance; but, in adopting this conclusion, we find it unnecessary to rely on the Administrative Law Judge's second rationale for finding a violation, that Daugherty's statement tended to restrain Regional Representative McKay in the exercise of his right to prosecute a grievance under the contract. In addition, we adopt the Administrative Law Judge's conclusion that Respondent did not violate Section 8(a)(1) of the Act when Daugherty said that any regional representative who was involved in unprotected secondary boycott activity was "digging his

own grave." However, we do not agree with the Administrative Law Judge's conclusions that Respondent further violated the Act when Daugherty directed Regional Representative Robbins to get permission before entering Respondent's office under threat of discharge, when Daugherty threatened to discharge regional representatives who filed internal charges against him, and when Daugherty issued two warning letters to Robbins. Contrary to the Administrative Law Judge and for the reasons set forth below, we find that these threats of discharge and warning letters were not issued in response to any protected activities and thus did not violate the Act.

**Background**

The Administrative Law Judge found that Regional Director Daugherty and Regional Representative Robbins had a long history of personal animosity, dating from the period between 1975 and 1978 when Robbins had been regional director and Daugherty had been a regional representative reporting to Robbins. Daugherty had supported Robbins' opponents in the elections for regional director in 1975 and for International secretary-treasurer in 1979. As regional director, Robbins had refused Daugherty's request for a new car, contrary to past practice; had issued oral and written warnings to Daugherty for failing to attend the meetings of two of his local unions, even though the meetings were held on the same night 130 miles apart; and had limited Daugherty's access to the regional office. Robbins also supported Daugherty's opponents during the elections for regional director in 1978 and 1979.

In 1979, when he was a rank-and-file regional representative, Robbins testified at two grievance hearings on behalf of two employees discharged by Daugherty; both of the employees won reinstatement and one of them (office clerical Hobbs) collected over \$18,000 in backpay. During 1979, Daugherty threatened on at least two occasions to "get" Robbins because of his testimony at these hearings and also threatened twice to discharge Robbins for insubordination: first, because Robbins refused to move from his home in Joplin, Missouri, to Lincoln, Nebraska; and, second, because Robbins refused to exchange cars with his successor as International secretary-treasurer. Robbins filed grievances about each of these last two incidents; Robbins also filed a grievance in January 1980 on behalf of himself and seven other regional representatives, protesting Daugherty's announcement requiring claims for meal expenses to be supported by itemized receipts. All three grievances were

<sup>1</sup> Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

<sup>2</sup> In adopting the Administrative Law Judge's conclusion that this statement violated Sec. 8(a)(1) of the Act, Chairman Van de Water and Member Hunter find it unnecessary to rely on *Nordstrom, Inc.*, 229 NLRB 601 (1977), and *Gary-Hobart Water Corporation*, 210 NLRB 742 (1974), which were cited by the Administrative Law Judge.

denied by the International and were not taken to arbitration.

### The Threats of Discharge

The Administrative Law Judge found that, in February 1980, Daugherty told Regional Representative Skelton that Robbins had "his nose in" the strike by Respondent's office clericals and that Skelton should tell Robbins "to keep his nose out of it or he [is] going to be fired." The Administrative Law Judge also found that, in April 1980, Daugherty told Regional Representative McKay that Respondent would not have lost the Hobbs grievance arbitration "if it was not for Robbins" and that he was tired of the regional representatives "getting together against" him and would "retaliate and get them."

The Administrative Law Judge further found that, on May 2, 1980, Daugherty observed Robbins preparing an arbitration brief in the regional office and closed the office safe. Daugherty then told office clerical Thompson that he had closed the safe because he did not trust Robbins "as far as I can throw him"; that the safe was to remain closed as long as Robbins was in the office; and that, therefore, if anything was missing from the safe he would know who did it (Thompson). Daugherty also told Robbins that he had closed the safe because he did not trust Robbins "further than I can see you" and, referring to Robbins' previous restriction on his access to the office, stated, "I do not want to see you in this regional office again without my prior approval . . . and if I find you in here again without my prior approval, you'll be fired." Daugherty testified that various documents had disappeared from the safe while he was regional director and that he thought Robbins was responsible for these thefts, either directly or indirectly through the office clericals.

Finally, the Administrative Law Judge found that, on May 9, 1980, Daugherty had a conversation with Regional Representative Skelton about the Goshen local (which was serviced by Skelton) during which he asked Skelton, "Do you know anything about anybody that is trying to impeach me, file charges against me, and file a suit against me?" Skelton replied that he had "heard rumors of all three" but did not know "who is doing it." Daugherty then stated he knew Robbins to be part of it, along with Regional Representatives Willis, Purvis, and another whose name he did not know, and concluded, "I'll tell you this, they keep it up and they're going to be fired." Daugherty testified that, in March 1980, he had been told by several officers of the Goshen local that their local union president was trying to get Daugherty impeached

and that she had said she was following Robbins' advice.

We agree with the Administrative Law Judge's conclusions that Daugherty's February and April statements were threats of retaliation against Robbins' protected concerted activities; i.e., his supposed involvement in the office clericals' strike and his filing of a grievance on behalf of himself and seven other regional representatives. However, we do not agree with the Administrative Law Judge's conclusion that Daugherty's two threats in May were made in response to protected concerted activities.

Despite the lack of any direct evidence to connect Daugherty's statements on May 2 with any protected concerted activities by Robbins, the Administrative Law Judge concluded that Daugherty would not have prohibited Robbins from entering the regional office if it had not been for Robbins' previous protected concerted activities, toward which Daugherty had expressed animus on other occasions. While we note that Daugherty had twice threatened to discharge Robbins for his protected concerted activities in 1980 and had also threatened on two occasions in 1979 to "get" Robbins for testifying on behalf of other employees at grievance hearings, we also note that Daugherty and Robbins had a long history of personal animosity unrelated to any protected concerted activities, that Robbins had previously prohibited Daugherty from entering the regional office when their positions were reversed, and that it is undisputed that documents had disappeared from the office safe after Robbins was ousted as regional director. In the absence of any direct expression of animus or any closer timing linking Daugherty's statements on May 2 with Robbins' previous protected concerted activities, we are unwilling to draw the inference that Daugherty imposed this restriction on Robbins in retaliation against Robbins' protected concerted activities rather than in response to Robbins' other hostile conduct towards Daugherty. However, even assuming that the General Counsel has established a *prima facie* case, we find that Respondent has met its burden of showing that Daugherty would have prohibited Robbins from entering the regional office regardless of Robbins' protected concerted activities. Thus, we note it is undisputed that at the time in question Daugherty referred to the restrictions Robbins had previously imposed on his access to the office and to his suspicions of Robbins regarding items missing from the safe. Therefore, Daugherty's prohibition against Robbins' entering the regional office did not violate Section 8(a)(1) of the Act. Accordingly, we also find that Daugherty's accompanying threat to

discharge Robbins was not unlawful, and we shall dismiss these allegations of the complaint.

As to Daugherty's May 9 statements, the Administrative Law Judge concluded that Daugherty's mention of charges and suits was a reference to unfair labor practice charges and thus his threat of discharge was directed at protected concerted activities. Although Daugherty's statement about charges may have been overbroad, we find that in the context of his remarks as a whole it is reasonable to conclude he was referring merely to internal union charges which could lead to his impeachment rather than to unfair labor practice charges. We note that Daugherty first mentioned attempts to impeach him before asking about charges being filed; that Daugherty had received reports from several officers of the Goshen local in March 1980 indicating Robbins was advising their local union president in her attempts to get Daugherty impeached; that Daugherty made the statements during a conversation about the Goshen local; and that Skelton, the employee to whom Daugherty's remarks were directed, was responsible for the Goshen local and was aware of the rumors about attempts to get Daugherty impeached. As the Administrative Law Judge correctly stated in his Decision, employee activities for the purpose of causing changes in management personnel are not protected under the Act. Since Daugherty's threat was apparently directed toward employee activities which were unprotected, such as the filing of internal union charges in an attempt to cause his impeachment, it did not violate Section 8(a)(1) of the Act. Accordingly, we shall dismiss this allegation of the complaint.

#### The Warning Letters

The Administrative Law Judge found that, on October 1, 1980, Daugherty sent a letter asking Robbins to explain why he had interfered with the affairs of the Goshen local when he was not assigned to that local. The letter stated that it would "serve as a warning notice" and would be "placed in your personal file" if no acceptable answer was received. In a letter dated October 14, 1980, Robbins denied interfering with the affairs of the Goshen local, and Daugherty took no further action. The Administrative Law Judge found that, in March, May, and June 1980, Daugherty had had conversations with officers of the Goshen local who stated that their local union president claimed Robbins was advising her. In the June conversation, one of the officers asked Daugherty to "do something about Archie [Robbins] interfering in our local."

Relying on his previous findings of 8(a)(1) violations in early 1980 and on the fact that Robbins had later filed an unfair labor practice charge on which a complaint had issued, the Administrative Law Judge concluded that Daugherty issued the October 1 warning letter in retaliation against Robbins' protected concerted activities, his union activities, and his filing of an unfair labor practice charge. However, we have dismissed two of the four 8(a)(1) violations on which the Administrative Law Judge relied to establish Respondent's motivation. Furthermore, we note that Robbins filed the unfair labor practice charge on June 16, 1980, and the complaint issued on July 25, 1980, a full 2 months before Daugherty sent Robbins the warning letter. In the absence of any direct expressions of animus towards Robbins' filing of an unfair labor practice charge and without any closer timing between the previous 8(a)(1) violations or the issuing of the complaint and Daugherty's warning letter, we are unwilling to infer that Daugherty issued the warning letter in retaliation against Robbins' protected activities rather than in response to the complaints about Robbins' interference in the affairs of the Goshen local. Moreover, assuming, *arguendo*, that the General Counsel has established a *prima facie* case, we find that Respondent has met its burden of showing that Daugherty would have issued the warning letter to Robbins despite Robbins' protected activities. Thus, we note that it is undisputed that Daugherty did receive complaints from officers of the Goshen local about Robbins' interference; that Respondent had had a policy since the time when Robbins was regional director of prohibiting regional representatives from becoming involved in the affairs of locals to which they were not assigned; and that Regional Representative Skelton, who was assigned to the Goshen local, admitted to Daugherty that Robbins had "violated his own directive" against interference by his dealings with the Goshen local president. Therefore, we find that the October 1 warning letter did not violate Section 8(a)(1), (3), and (4) of the Act, and we shall dismiss this allegation of the complaint accordingly.

The Administrative Law Judge also found that, on October 23, 1980, Daugherty sent a letter to Robbins stating that Robbins' failure to pass out the key chains and nail clippers provided by Respondent as organizational materials could have been one of the reasons Respondent lost a representation election at Control Data Corporation. Robbins had been involved in the Control Data organizational campaign along with several other regional representatives, but Regional Representative Williams had been in charge of the campaign. In May 1980,

Daugherty had given Williams 800 key chains and 800 nail clippers to be used during the Control Data campaign; Williams had returned about 400 of the key chains after Respondent lost the election on June 13, 1980. At a meeting of the regional representatives on October 11, 1980, Daugherty asked Robbins whether he had been "handing out the organizational materials that's available to you." Robbins said he "wasn't aware that there was organizational material available" and thus he had not distributed any. Daugherty also asked Williams if he had passed out the materials, and Williams said he had; however, Daugherty did not ask any of the other regional representatives whether they had passed out the organizational materials. Regional Representative McKay, who was present at the meeting and had been involved in the Control Data campaign, testified that he had not distributed any key chains or nail clippers either.

The Administrative Law Judge concluded that Daugherty was motivated by the same factors in issuing the October 23 letter as he was in issuing the October 1 warning letter. However, we have found that the evidence relied on by the Administrative Law Judge fails to establish that Daugherty issued the letters in retaliation against Robbins' protected activities. While it is suspicious that Daugherty did not question or reprimand McKay about his failure to distribute the organizational materials, suspicion alone is not enough to establish an illegal motive. In the absence of any direct expressions of animus linking the October 23 letter with Robbins' protected activities and without any closer timing between these protected activities and the issuance of the October 23 letter, we cannot conclude that Daugherty issued the October 23 letter in retaliation against Robbins' protected activities. We note that the October 23 letter does not purport to be a disciplinary letter but rather is merely a reminder to use the organizational materials provided by Respondent in future campaigns. Therefore, we find that the October 23 letter did not violate Section 8(a)(1), (3), and (4) of the Act, and we shall dismiss this allegation of the complaint accordingly.

#### ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Allied Industrial Workers of America, AFL-CIO, Region 8, Decatur, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Delete paragraphs 1(b) and (c) and reletter paragraph 1(d) as 1(b).
2. Delete paragraph 2(a) and reletter the subsequent paragraphs accordingly.
3. Substitute the attached notice for that of the Administrative Law Judge.

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT threaten to discharge or otherwise to "retaliate and get" our employees for engaging in union or concerted activities protected by the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

##### ALLIED INDUSTRIAL WORKERS OF AMERICA, AFL-CIO, REGION 8

#### DECISION

##### STATEMENT OF THE CASE

RICHARD J. BOYCE, Administrative Law Judge: This consolidated matter was heard before me in Kansas City, Kansas, on February 5 and 6 and March 12 and 13, 1981. Both underlying charges were filed by Archie E. Robbins, acting in his individual capacity, that in Case 17-CA-9743 on June 16, 1980, and that in Case 17-CA-10013 on November 3, 1980.

The complaint in Case 17-CA-9743 was issued on July 25, 1980, was amended during the hearing, and alleges that Allied Industrial Workers of America, AFL-CIO, Region 8 (Respondent), by its regional director, Lyle Daugherty, violated Section 8(a)(1) of the National Labor Relations Act (the Act) in four instances between February and October 1980 by "threaten[ing] to discharge employees," once in April 1980 by "threaten[ing] employees with unspecified reprisals," and on May 2, 1980, by "direct[ing] an employee to secure prior permission from . . . Daugherty before entering the Respondent's facility," all because of assorted protected concerted activity by the employees.

The complaint in Case 17-CA-10013 was issued on December 4, 1980, was amended during the hearing, and alleges that Respondent violated Section 8(a)(1), (3), and (4) of the Act on October 1 and 23, 1980, by "issu[ing] disciplinary letters to . . . Robbins" because of his var-

ious protected concerted and union activities and because he had filed the charge in Case 17-CA-9743.

An order consolidating the two complaints for hearing and decision was issued on December 5, 1980.

### I. JURISDICTION

Respondent is a labor organization headquartered in Decatur, Illinois. It annually collects membership dues exceeding \$250,000, over \$50,000 of which it remits to its parent International (the International) in Milwaukee, Wisconsin.

Respondent is an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. THE LABOR ORGANIZATIONS

The alleged union activities contemplated by the complaint in Case 17-CA-10013 concern the Allied Industrial Workers Representatives Union (the Representatives Union), which is the collective-bargaining representative of Respondent's regional representatives, and the Office & Professional Employees International Union (the Office Employees Union), which is the collective-bargaining representative of Respondent's office clerical employees.

Both the Representatives Union and the Office Employees Union are labor organizations within the meaning of Section 2(5) of the Act.

### III. BACKGROUND

Respondent's territorial jurisdiction embraces eight midwestern and southwestern States. Daugherty has been its regional director since April 1978, having prevailed in two elections. Robbins has been a regional representative for Respondent, and thus Daugherty's subordinate, since September 1979. From September 1975 to April 1978, their roles were reversed, Robbins being Respondent's chief executive and Daugherty a regional representative. Robbins doubled as secretary-treasurer of the International from December 1977 to April 1978, after which he served solely as secretary-treasurer until defeated for reelection in August 1979.

Daugherty and Robbins have known one another since about 1960. Their relationship during the time that Robbins was regional director and Daugherty a regional representative, in Daugherty's words, "wasn't really too good." The record is rife with indicia that matters have not improved since; and, as Respondent observes in its brief, "both men have gone to rather extreme lengths in their efforts to besmirch each other."

In 1975, Daugherty backed Robbins' opponent in the election elevating Robbins to the regional directorship. In 1976, Robbins, as regional director, refused Daugherty's request for a new car, even though his existing car had logged sufficient miles to meet the guidelines for replacement; and, in late 1977, he rebuked Daugherty orally and in writing for failing to attend the meetings of two local unions within his area of responsibility, although the two locals were 130 miles apart and apparently met on the same nights. The record intimates that

Robbins may have limited Daugherty's access to the regional office as well.

Robbins likewise supported Daugherty's opponents when he was elected and then reelected regional director in April 1978 and August 1979. Upon becoming regional director, Daugherty challenged Robbins to support certain expenses incurred while he had been regional director. Robbins declined and the matter was not pursued.

As regional director, Daugherty discharged a regional representative, Tom Willis, for alleged misconduct. During a grievance hearing over the matter, in late 1978, Robbins corroborated Willis' alibi, provoking Daugherty to call him "a goddamn liar," and to state that Robbins was "not wanted or welcome in Region 8" and to "keep [his] ass out." Willis won the grievance and was reinstated.

In January 1979, as a committeeman for the Representatives Union, Willis filed some grievances against Respondent on behalf of fellow regional representatives. Daugherty confronted him, grievances in hand, saying he "guessed" that Robbins "will cover these up for you, too"—a manifest allusion to Robbins' testimony in the Willis grievance hearing. Daugherty continued, "I will get your friend Robbins' ass." To Willis' rejoinder that "people got a right to tell the truth," Daugherty stated, "You just wait and see what I can do to your friend Robbins."

While regional director, Robbins negotiated an arrangement with the Office Employees Union designed to prevent his successor from laying off either of the office clerical employees in the regional office, Robin Hobbs and Donna Thompson, so long as work was available for them to do, whether or not its being done was needed or wanted. The understanding was not incorporated in the basic labor agreement, instead being embodied in a separate instrument, which Robbins took with him when he left Respondent in April 1978.

Daugherty, not aware of the side arrangement, informed Hobbs shortly after he became regional director that she was to be laid off. Hobbs filed a grievance, alleging that the layoff "would be a direct violation of the . . . labor agreement." Testifying in the ensuing arbitration hearing, in May 1979, Robbins unveiled the side agreement. This resulted in Hobbs' being reinstated and receiving over \$18,000 in backpay. Daugherty was later to say that "it was a sad mistake that a former director ever entered into such an agreement . . . and then to withhold evidence until the arbitration hearing . . . was another mistake."

A month or so after the Hobbs arbitration hearing, Daugherty told Willis that he and Robbins should not have testified against him. Willis replied that they had been subpoenaed and had told the truth. Daugherty remarked, "We will see who has the last laugh, me or your buddy Robbins."

Daugherty supported Robbins' opposition during his unsuccessful bid for reelection as secretary-treasurer of the International in August 1979. Among other things, he circulated those portions of the Hobbs arbitration transcript containing Robbins' testimony. Robbins later conceded that this "probably had an effect" on the outcome.

Upon reverting to regional representative in September 1979, Robbins began working from his home in Joplin, Missouri. By letter dated September 26, Daugherty directed that he move to Lincoln, Nebraska, with Respondent to pay moving expenses. Robbins did not comply, instead filing a grievance on October 11 and staying in motels in Lincoln and submitting claims for away-from-home living expenses. In his grievance, Robbins cited various provisions of the agreement between Respondent and the Representatives Union, as well as past practice, and asserted: "I feel that I am being discriminated against due to Daugherty's personal and political feelings."

By letter dated December 20, Daugherty noted Robbins' continued failure to establish his residence in Lincoln, warning:

Further refusal to obey orders will force . . . [me] . . . to cut off reimbursement of motel and meal charges . . . and/or [impose] other penalties up to and including discharge.

By letter dated January 15, 1980, the president of the International notified the president of the Representatives Union that the grievance had been denied. It was not taken to arbitration.

Robbins' noncompliance nevertheless persisted, eliciting another letter from Daugherty, dated March 19, 1980. In it, Daugherty stated that, effective March 28, Respondent "will no longer reimburse you for hotel bills and meal charges," and that "any further insubordination may result in dismissal." With that, Robbins moved to Lincoln, returning to Joplin a few months later.

Robbins filed a second grievance on November 30, 1979. Daugherty had directed that he exchange cars with his successor as secretary-treasurer of the International, the successor formerly having been a regional representative; and had threatened Robbins with discharge if this were not accomplished by December 7. Robbins alleged that Daugherty, by denying him the option of choosing a new car in replacement of that he had used while secretary-treasurer, was contravening certain specified provisions of the labor agreement. By letter dated January 15, 1980, the president of the International notified the president of the Representatives Union that this grievance also had been denied. It was not taken to arbitration.

Robbins filed yet another grievance on January 14, 1980. This one, on behalf of himself and seven other regional representatives, protested Daugherty's directive that, as of January 1, claims for meal expenses were to be accompanied by itemized receipts. This grievance, like the other two, was denied at the International level, and was not taken to arbitration. The record does not disclose the date of denial.

#### IV. THE ALLEGED VIOLATIONS

##### A. The Alleged Incident in Mid-February 1980

*Allegation:* The complaint in Case 17-CA-9743 alleges that Daugherty, in mid-February 1980, "threaten[ed] to

discharge employees because of their protected concerted activity,"<sup>1</sup> thereby violating Section 8(a)(1).

*Facts:* As previously stated, Respondent's office clerical employees are represented by the Office Employees Union. On January 27, 1980, those employees went on strike in aid of their union's position in contract negotiations with Respondent. The strike continued until April 9.

On a date unknown in mid-February, George Skelton, a regional representative, had a telephone conversation with Daugherty in which he asked how the strike was "going." Daugherty replied, "Fine," but that Robbins had "his nose in that strike" and that Skelton "had better tell him to keep his nose out of it or he [is] going to be fired."

During a bargaining meeting between Respondent and the Office Employees Union a week or two earlier, Daugherty asserted that Robbins had been advising one of the office clericals, Donna Thompson, regarding the strike, and that, if it had not been for Robbins, "there would be no strike." The spokesman for the Office Employees Union denied at the time that this was true, and there is no evidence that Robbins had involved himself in any way in the negotiations or the strike.<sup>2</sup>

*Conclusion:* It is beyond cavil that employees in one bargaining unit—in this case, the regional representatives—are protected under the Act when engaging in conduct for the aid and protection of employees in another unit—the office clerical employees—employed by a common employer. *Nordstrom, Inc.*, 229 NLRB 601, 606 (1977); *Gary-Hobart Water Corporation*, 210 NLRB 742, 744 (1974).

Whether or not conveyed to Robbins, Daugherty's admonition to Skelton that Robbins should "keep his nose out of" the strike of the office clerical employees or "be fired" necessarily restrained or coerced at least one regional representative, Skelton, as concerns possible engagement in such protected conduct. That statement therefore violated Section 8(a)(1) as alleged.

##### B. The Alleged Incident in April 1980

*Allegation:* The complaint in Case 17-CA-9743 alleges that Daugherty, in April 1980, "threaten[ed] employees with unspecified reprisals because of its employees' protected concerted activity,"<sup>3</sup> thereby violating Section 8(a)(1).

<sup>1</sup> The complaint particularized that the protected concerted activity included "support of strike activity against Respondent or giving testimony in support of grievances . . . and charges filed with the Board."

<sup>2</sup> Skelton and Thompson, respectively, are credited that Daugherty made the remarks they attributed to him. As concerns the Skelton conversation, Daugherty testified that the strike was not mentioned, specifically denying that he said "Robbins should keep his nose out of the strike." Skelton testified with a sureness and ease on the point that carried greater conviction, and his version derived plausibility from Daugherty's remarks during the bargaining session a week or two before. That Daugherty may have told other regional representatives that he was not going to cross the Office Employees picket line and that they were not expected to—as he testified he did—is not incompatible with a less benign attitude as concerns Robbins.

<sup>3</sup> The complaint particularized that the protected concerted activity included "filing and processing grievances."

**Facts:** On a night in April, following a meeting in Omaha, Nebraska, in which the Hobbs arbitration matter was among the things discussed, Daugherty received a ride to his hotel from Ron McKay, a regional representative. During the accompanying conversation, Daugherty raised the Hobbs arbitration again, remarking that "it was a sad mistake" that Robbins "ever entered into" the side arrangement protecting Hobbs from layoff, and that "to withhold evidence until the arbitration hearing . . . was another mistake. Daugherty continued that Respondent would not have lost that arbitration "if it was not for Robbins"; and that he was tired of the regional representatives' "getting together against" him, and would "retaliate and get them."<sup>4</sup>

As earlier mentioned, Robbins had filed a grievance in January on behalf of himself and seven other regional representatives protesting Daugherty's directive that claims for meal expenses be accompanied by itemized receipts. McKay was among those joining in the grievance.

**Conclusion:** It is concluded, on two grounds, that Daugherty's vow to "retaliate and get" the regional representatives for "getting together against" him violated Section 8(a)(1) as alleged. First, coming perhaps 3 months after eight of the regional representatives had filed the joint grievance protesting his new meal-expense policy, and apparently while that grievance was still pending, the statement was likely to convey to McKay, a participant in that grievance, a threatening purport as concerns such protected activity.

Second, having been spoken in juxtaposition with Daugherty's remarks deploring Robbins' part in the Hobbs arbitration, the statement carried the tendency to restrain McKay in the vindication of his statutory right to bring forth all pertinent evidence during the prosecution of grievances. *Rohr Industries, Inc.*, 220 NLRB 1029, 1036 (1975); *Ebasco Services, Incorporated*, 181 NLRB 768, 769-770 (1970).

### C. The Alleged Incident of May 2, 1980

**Allegation:** The complaint in Case 17-CA-9743 alleges that Daugherty, on May 2, 1980, "threaten[ed] to discharge" Robbins and "direct[ed] [him] to secure prior permission . . . before entering Respondent's facility" because of Robbins' various protected concerted activities,<sup>5</sup> thereby violating Section 8(a)(1).

**Facts:** On May 2, Robbins was in Decatur to attend a conference sponsored by Respondent at a local hotel. That day, Daugherty found him preparing an arbitration brief in the regional office instead of attending one of the meetings. He was using, among other things, the resources of the regional office library.

Daugherty remarked to Robbins that he should not have come to the conference if he was "too busy to attend." Robbins responded that the conference was "mandatory," and that he had to have the brief ready by

the following week. Daugherty countered, "I'm telling you again, if you're too busy to attend the sessions, you shouldn't come."

Daugherty then spoke to Donna Thompson, earlier identified as an office clerical employee, stating that he had "no use for" Robbins; that he did not trust Robbins "as far as I can throw him"; and that he consequently had closed the safe, and it was to remain closed "as long as [Robbins] is here." Daugherty added, alluding to the fact that Thompson, but not Robbins, knew the combination to the safe, that he would "know where it came from" should anything be missing from the safe.<sup>6</sup>

With that, Daugherty returned to Robbins, declaring that he had closed the safe because he did not trust Robbins "further that I can see you." Daugherty went on, referring to a similar restriction Robbins supposedly imposed upon him when Robbins was regional director, "Furthermore, I do not want to see you in this regional office again without my prior approval." Robbins responded that he "must be kidding." Daugherty persisted: "I'm telling you once more, that's a direct order, and if I find you in here again without my prior approval, you'll be fired."

Robbins protested that the building belonged to the membership, and that he was a dues-paying member; and said that he hoped the restriction applied to all regional representatives. Daugherty replied, "I'm talking to you, and you can consider that an order."<sup>7</sup> Robbins was permitted to remain another 5 minutes or so to finish what he had been doing.

**Conclusion:** While the enmity between Daugherty and Robbins apparently extends far back in time, Daugherty's hostility was palpably amplified by the crucially adverse testimony of Robbins, while secretary-treasurer of the International, in the 1978 Willis grievance hearing and the 1979 Hobbs arbitration hearing; by Robbins' filing of three grievances against Daugherty within 4 months after becoming a regional representative in September 1979, most recently and aggravatingly in concert with seven colleagues; and by Daugherty's perception of Robbins as having "his nose in" the office clerical employees' strike in early 1981.

The filing of the three grievances, two alleging violations of the agreement between Respondent and the Representatives Union and the third in collaboration with several coworkers, obviously was protected conduct. And, as earlier indicated, the support of the office clerical employees' strike, actual or perceived, likewise was protected. Moreover, although Robbins' testimony in the Willis grievance and Hobbs arbitration matters occurred

<sup>4</sup> Daugherty testified that various documents disappeared from the safe from time to time, and he left no doubt that he supposed Robbins, directly or indirectly, to be the culprit. Thompson testified that she much preferred working for Robbins, when he was regional director, than for Daugherty; and the record suggests that Daugherty saw them as in league to undermine him.

<sup>7</sup> The only discrepancy of note among the several versions of this incident concerns the scope of Daugherty's prohibition. Robbins and Thompson testified that he forbade Robbins from the regional office altogether. Daugherty and Dennis Leazier, a regional representative, testified, respectively, that the ban applied to those areas not open to the general public and to "the interior of the office." Robbins and Thompson were more convincing on the point and are credited.

<sup>5</sup> This credited version of the conversation is an amalgam of the testimony of McKay and Daugherty. Daugherty testified that he recalled the exchange only "vaguely," and that he could not recall saying he was tired of the representatives' "ganging up on" him. McKay's testimony in that regard and that Daugherty spoke of retaliation was convincing.

<sup>6</sup> The complaint particularized that the protected concerted activity included that set forth above in fn. 1 and the "filing of grievances."



when he was not an employee entitled to the protections of the Act, adverse action taken against him because of it nevertheless would violate Section 8(a)(1) by interfering with the statutory right of aggrieved employees to bring forth all pertinent evidence during the prosecution of grievances. *Nevis Industries, Inc., d/b/a Fresno Townhouse*, 246 NLRB 1053, 1054 (1979); *Rohr Industries, Inc.*, 220 NLRB 1029, 1036 (1975); *Ebasco Services, Incorporated*, 181 NLRB 768, 769-770 (1970).

The historical bases for their antagonism notwithstanding, it is concluded that Daugherty's prohibition against Robbins' entering the regional office without prior approval, and the accompanying threat of discharge, would not have issued had it not been for the just-considered amalgam of activities by Robbins. It is further concluded, therefore, that the prohibition and threat violated Section 8(a)(1) as alleged. *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083, 1089 (1980).

#### D. The Alleged Incident of May 9, 1980

**Allegation:** The complaint in Case 17-CA-9743 alleges that Daugherty, on May 9, 1980, "threaten[ed] to discharge employees because of their protected concerted activity,"<sup>8</sup> thereby violating Section 8(a)(1).

**Facts:** On March 20, 1980, incidental to a meeting in Dearborn, Michigan, Peggy Felkner and Nikki Stump, officers of one of the locals within Respondent's jurisdiction—Local No. 702, Goshen, Indiana—made a point of speaking with Daugherty. They told him that there had been "many" long-distance telephone calls from the president of their local, Ruth Ann (Terri) Siebert, to Robbins; that the calls had been charged to the local; that Siebert had said on occasion that she "was following the advice of" Robbins in the conduct of her duties as president; that Siebert "berated" Daugherty "every chance she had"; and that Siebert "was trying to get" Daugherty impeached as regional director.

The following May 9, in Fort Wayne, Indiana, Daugherty had a conversation with George Skelton, the regional representative over the Goshen local. Daugherty asked, "Do you know anything about anybody that is trying to impeach me, file charges against me, and file a suit against me?" Skelton answered that he had "heard rumors of all three," but did not know "who is doing it." Daugherty rejoined that he knew Robbins to be part of it, along with Tom Willis and two other regional representatives, Earl Purvis, and another whose name he did not know. Daugherty added, "I'll tell you this, they keep it up and they're going to be fired." Skelton, a committeeman for the Representatives Union, then cautioned, "As a representative of those employees, I would suggest to you that you have the goods on them before you take any action."

Robbins testified that he and Siebert were "very good friends"; and that, from August 1979 through April 1980, the two had 12 to 15 long-distance telephone conversations. Most of them were "about problems in [Siebert's] personal life," according to Robbins. Robbins denied

ever discussing Daugherty's impeachment with Siebert, or how she should handle the affairs of her local.

**Conclusions:** It is concluded that Daugherty violated Section 8(a)(1) as alleged by telling Skelton, an employee, that he knew Robbins and others were "trying to . . . file charges against [him], and file a suit against [him]"; and that "they're going to be fired" if they "keep it up."

While employee activities for the sole purpose of bringing changes in management personnel are not protected under the Act, whether the employer be a labor organization or otherwise,<sup>9</sup> Daugherty's reference to charges and suits against him, coupled with the specter of discharge, was of a sort likely to chill the free exercise by any employee hearing it—Skelton, in this instance—of the protected right concertedly to seek redress of grievances or file unfair labor practice charges.

#### E. The Letter of October 1, 1980

**Allegation:** The complaint in Case 17-CA-10013 alleges that Daugherty, on October 1, 1980, issued a disciplinary letter to Robbins because of Robbins' various protected activities,<sup>10</sup> thereby violating Section 8(a)(1), (3), and (4).

**Facts:** As just set forth, two officers of the Goshen local, Felkner and Stump, made certain representations to Daugherty in March 1980 concerning Robbins' dealings with and influence over the president of the local, Siebert, and concerning Siebert's interest in Daugherty's impeachment; after which, on May 9, Daugherty asked Skelton if he knew about anyone trying to impeach or take other action against him, then stated that he knew Robbins and others to be involved in such activity, and that they would be fired if they kept it up.

In the same May 9 conversation between Daugherty and Skelton, Daugherty declared that Robbins "has his nose in" the Goshen local; that it had come out at meetings of the local that Siebert regularly conferred with him. Daugherty also remarked that he had learned there had been a number of telephone conversations between Robbins and Siebert, that they were seeking his impeachment, and that there was the possibility of their committing "slander or libel." Daugherty stated, finally, "If [Robbins] keeps it up, that's another thing I'm going to have on him."<sup>11</sup>

<sup>9</sup> *Butchers Union Local 115, affiliated with the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO*, 209 NLRB 806, fn. 1 (1974); *Retail Clerks Union, Local 770 Retail Clerks International Association, AFL-CIO*, 208 NLRB 356, 357 (1974).

<sup>10</sup> The complaint particularized that the protected activities included filing the charge in Case 17-CA-9743 and giving testimony under the Act; joining, supporting, or assisting the Representatives Union and/or the Office Employees Union; and engaging "in concerted activities for the purpose of collective bargaining or other mutual aid or protection."

<sup>11</sup> Daugherty testified that Skelton acknowledged an awareness of Robbins' dealings with Siebert, saying he had mentioned to Robbins that he had violated his "own directive," while regional director, that regional representatives were not to become involved in the affairs of locals for which they were not officially responsible. Skelton testified, on the other hand, that he told Daugherty he had attended nearly all of the meetings of the Goshen local, and it had never come out that Robbins was involved in its affairs. Daugherty is credited. His testimony on this point was detailed and convincing.

<sup>8</sup> The complaint particularized that the protected concerted activity included that set forth above in fn. 1.



On May 13 or 14, while attending a meeting in Fort Wayne, Felkner again told Daugherty that Siebert had been citing Robbins as her authority when saying the Goshen local "couldn't do this" and "couldn't do that," and voiced the hope that Robbins would stop interfering with the local now that Siebert was no longer president.<sup>12</sup>

On June 7, following a local membership meeting in Goshen, Felkner told Daugherty that Siebert, citing Robbins, was "still saying that she was acting as president"; and asked that Daugherty "do something about Archie interfering in our local." Daugherty replied that he was "further investigating the situation."

On October 1, Daugherty sent this letter to Robbins:

According to the information given to me by members of Local 702 at Goshen, Indiana, you have interfered with the affairs of that Local Union.

I must ask you to give me an acceptable answer as to why you interfered with the affairs of Local 702 as you are not assigned to that Local Union.

If I cannot receive an acceptable answer, then this letter will serve as a warning notice and placed in your personal file.

I must also remind you that this is the fourth (4th) warning I have had to give you since you came back in Region 8 as a representative. Any further infractions will not be tolerated.

Robbins replied by letter of October 14:

The following is in reply to your attached letter dated October 1, 1980 regarding my alleged interference in the affairs of Local #702.

Upon reading your letter, it is plain that I have been judged and found guilty of an alleged offense prior to your even discussing the matter with me. You do not ask if I was involved in such activity but rather why I did it.

You had discussed this matter prior to this time with George Skelton, the representative who services that area and local union, and he informed you quite specifically that these allegations were not true and without foundation.

I have in no way interfered in the local #702 activities but since you seem determined to chase ghosts where I'm concerned, I insist that in order to settle this matter and let us all find out what's really behind it, that a meeting be held between those Local #702 members providing you such information, Representative Skelton who both services that Local Union and is also my AIWRU Committeeman, myself, and you. I think we would all be interested in what we find out.

<sup>12</sup> Charges were brought against Siebert, seeking her removal, on April 5, 1980. A hearing was held before a local trial committee on April 19; and, on May 3, the membership adopted the trial committee's recommendation that Siebert be found guilty as charged and that she therefore be fined \$500, be asked to resign as president, be barred from union functions for 2 years; and that she send a letter of apology to Daugherty. On July 8-9, 1980, the executive board of the International denied Siebert's appeal, but modified the penalty, limiting it to the withholding from her of elective or appointive positions in the local for 2 years.

In my opinion, this is just one more step in your continuing harassment and discriminatory attitude toward me due to your personal and political feelings where I'm concerned.

As I have stated in prior letters, at such time that you in any way attempt to utilize the "alleged" past warnings, I will take any and all necessary actions at that time.

Daugherty did not respond to Robbins' letter.

Daugherty testified that his letter was not disciplinary in purpose, but that he simply "wanted [Robbins] to give me answers as to why he was interfering with the affairs of" the local, and wanted him to desist "in the future." Daugherty nevertheless depicted it as a "letter of reprimand" during a Christmas party in Goshen in December 1980.

*Conclusion:* It has been concluded that Daugherty's May 2 denial to Robbins of access to the regional office, and the accompanying threat of discharge, would not have issued had it not been for Robbins' testimony in grievance and arbitration hearings, for his perceived support of a strike, and for his grievance activities; and that Daugherty therefore violated Section 8(a)(1).

It is fair to infer that the motivation behind Daugherty's October 1 letter was different in only one respect: In the interim, Robbins had filed the charge in Case 17-CA-9743 and the complaint therein had issued. Given the several indications throughout the record that Daugherty had what might be termed a "siege mentality" with respect to Robbins, it would be naive to suppose that these latest developments were not upsetting to him in the extreme, and did not contribute to the motivational mix.

True, Daugherty had received information in March, May, and June that Robbins was involving himself in the affairs of the Goshen local. That, however, provided only the wheels for the October 1 letter, the motor being those activities of Robbins mentioned above.

It is concluded, therefore, that the October 1 letter violated Section 8(a)(1), (3), and (4) as alleged.<sup>13</sup>

#### F. The Alleged Incident of October 6, 1980

*Allegation:* The complaint in Case 17-CA-9743 alleges that Daugherty, on October 6, 1980, "threaten[ed] to discharge employees because of their protected concerted activity,"<sup>14</sup> thereby violating Section 8(a)(1).

*Facts:* On October 6, according to Donna Thompson, she heard Daugherty state to two regional representatives, Jack Hartley and Smith Harris, that "whoever was filing these charges was digging their own graves."

Daugherty testified that he made a remark of that sort in the context of a spate of unfair labor practice charges that had been filed against Respondent alleging violations of the Act's secondary boycott provisions:

<sup>13</sup> Sec. 8(a)(3) because of Robbins' perceived support of the strike, and Sec. 8(a)(4) because of his use of the Board's processes.

<sup>14</sup> The complaint particularized that the protected concerted activity included that set forth in fn. 1.

pointed out to Jack [Hartley] that if the representatives continually get involved in this sort of thing, and it is proven that they are directly involved in it, we could be in serious trouble and we could all go down the drain. When a representative is doing that, he is not only digging his own grave, he is digging a grave for the whole international union.

Daugherty clarified that his use of the term "doing that" in the foregoing passage had in mind the representatives' being involved in secondary boycotts. He continued that he was "pointing out to" Hartley:

[I]f this international union does get involved in a secondary boycott, and we are found to be involved in it, the damage suits are terrific on that. An international union can be destroyed. We should never get in violation of a law like that. There is no excuse for it.

**Conclusion:** The context supplied by Daugherty for the remark in question was both unrebutted and credible. This allegation is without merit.

#### G. The Letter of October 23, 1980

**Allegation:** The complaint in Case 17-CA-10013 alleges that Daugherty, on October 23, 1980, issued a second disciplinary letter to Robbins because of Robbins' various protected activities,<sup>15</sup> thereby violating Section 8(a)(1), (3), and (4).

**Facts:** From November 1979 into June 1980, Robbins was involved from time to time in Respondent's effort to organize the employees of Control Data Corporation in Omaha. Another regional representative, Sam Williams, was in charge, and several other union professionals, including Ron McKay, also participated. The drive ended with an NLRB-conducted election on June 13. Respondent lost 705 to 260.<sup>16</sup>

By memorandum to Williams dated May 5, Daugherty stated that Respondent had key chains and mail clippers, and that they "are to be used in the Control Data campaign." Daugherty thereupon provided Williams with about 800 of each. After the election, Williams returned about 400 of the key chains, and apparently none of the clippers.

The following October 11, during a meeting of Respondent's regional representatives in Vincennes, Indiana, Daugherty asked Robbins if, during the Control Data campaign, he had been "handing out the organizational materials that's available to you." Robbins replied that he "wasn't aware that there was organizational material available," and that he consequently had not. Daugherty did not ask the same question of McKay, sitting nearby. McKay testified that he had not distributed the key chains and clippers either. Daugherty did ask Williams, however, receiving an affirmative answer.

Daugherty next sent this letter, dated October 23, to Robbins:

It was brought out in our Staff meeting of October 10, 1980, at Vincennes, Indiana, that you did not use the organizational material, such as plastic keys and nail clippers made available to you in the Control Data Corporation's R.C. campaign.

This could have very well been one of the reasons we lost the election.

In the future you will use the organizational material made available in such campaigns.

Daugherty testified that this was not a disciplinary letter.

**Conclusion:** It is concluded that Daugherty's October 23 letter was motivated by much the same factors motivating that of October 1, and that it consequently violated Section 8(a)(1), (3), and (4), as well. That it was not disciplinary on its face does not prevent its being improperly harassing and an improper career detriment to Robbins given the underlying unlawful motivation.

#### CONCLUSIONS OF LAW

Respondent, by Daugherty, violated Section 8(a)(1) of the Act, as found herein, by:

(a) Telling Skelton in February 1980 that Robbins was "going to be fired" if he did not "keep his nose out of" the office clerical employees' strike.

(b) Telling McKay in April 1980 that he was tired of the regional representatives' "getting together against" him, and would "retaliate and get them."

(c) Prohibiting Robbins, on May 2, 1980, from entering the regional office without permission, and threatening him with discharge if he did not comply.

(d) Telling Skelton, on May 9, 1980, that he knew Robbins and others were "trying to . . . file charges against [him], and file a suit against [him]"; and that "they're going to be fired" if they "keep it up."

Respondent, by Daugherty, violated Section 8(a)(1), (3), and (4) of the Act, as found herein, by sending a warning letter to Robbins dated October 1, 1980, and a letter critical of him dated October 23, 1980.

Respondent did not otherwise violate the Act as alleged.

#### ORDER<sup>17</sup>

The Respondent, Allied Industrial Workers of America, AFL-CIO, Region 8, Decatur, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening to discharge or otherwise "retaliate and get" its employees for engaging in union or concerted activities protected by the Act.

(b) Prohibiting employees from entering its regional office without prior approval, and threatening them with discharge if they do not comply, for engaging in union

<sup>15</sup> The complaint particularized that the protected activities included those set forth above in fn. 10.

<sup>16</sup> Case 17-RC-9017

<sup>17</sup> All outstanding motions inconsistent with this Order are denied. In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

or concerted activities protected by the Act, or because, as supervisors, they testified adversely to Respondent in grievance or arbitration proceedings involving its employees.

(c) Sending letters of warning or criticism to its employees because they engaged in union or concerted activities protected by the Act, because they filed charges or otherwise invoked the processes of the Board, or because, as supervisors, they testified adversely to Respondent in grievance or arbitration proceedings involving its employees.

(d) In any like or related manner interfering with, restraining, or coercing its employees in their exercise of rights under the Act.

2. Take the following affirmative action necessary to effectuate the purposes of the Act:

(a) Remove from its files the warning letter to Archie E. Robbins dated October 1, 1980, and the letter critical of him dated October 23, 1980; expunge from its records any reference to those letters; and notify Robbins in writing that this has been done.

(b) Post at its regional office in Decatur, Illinois, and at its other offices, if any, copies of the attached notice marked "Appendix."<sup>18</sup> Copies of said notice, on forms provided by the Regional Director for Region 17, after being duly signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 17, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that the allegations of the complaint found without merit be dismissed.

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<sup>18</sup> In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."